

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

John Dasta,

Plaintiff,

v.

ORDER

Civil File No. 04-4475 (MJD/RLE)

Bobby Shearin, Dr. Leonardo F.
Giron, Julie Hayes, Howard Nelson,
and Bernie Richards, in their official
and individual capacities,

Defendants.

This matter is before the Court on Plaintiff John Dasta's ("Plaintiff") amended application to proceed *in forma pauperis* ("IFP") on appeal. [Docket No. 114]. Plaintiff originally submitted an application with information indicating that in the six-month period immediately preceding the filing of the notice of appeal, the average monthly deposits to his account were \$1,775.33 and the average monthly balance in Plaintiff's account was \$239.34. [Docket No. 106]. This Court found that Plaintiff's average monthly deposits equaled an annual income of \$21,300, an amount well above the 2006 poverty guidelines, see Vol. 71 Fed. Reg. 3848-49 (January 24, 2006), and denied his application. [Docket No. 107].

Plaintiff has now submitted information which indicates that the prison account officer signed an incorrect accounting certificate. Plaintiff has also submitted a new accounting certificate which shows that in the six-month period

immediately preceding the filing of the notice of appeal, the average monthly deposits to his account were \$295.89 and the average monthly balance in Plaintiff's account was \$239.34. Based on Plaintiff's additional information, the Court finds that Plaintiff is financially eligible for IFP status. Plaintiff is thus excused from pre-paying the entire appeals fee of \$255.00, but he is still required to pay the entire fee over a period of time. See Ashley v. Dillsworth, 147 F.3d 715, 716 (8th Cir. 1998).

28 U.S.C. § 1915(b)(1) requires that Plaintiff pay an initial partial filing fee. Pursuant to Section 1915(b)(1), Plaintiff must initially pay an amount equal to twenty percent (20%) of the greater of the average monthly deposits or the average monthly balance listed above. Plaintiff's required initial filing fee is thus twenty percent (20%) of \$295.89, which is \$59.18. Plaintiff must pay his initial filing fee before this appeal will be allowed to proceed.

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed Without Prepayment of Fees [Docket No. 114] is **GRANTED**, subject to Plaintiff's payment, within twenty (20) days after the date of this Order of his initial partial filing fee of not less than \$59.18.

Dated: September 25, 2006

s / Michael J. Davis
Michael J. Davis
United States District Court Judge